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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,518	05/09/2005	Gunther Beisel	FI-52PCT	4424
40570	7590	02/07/2006	EXAMINER	
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			HENRY, MICHAEL C	
			ART UNIT	PAPER NUMBER

1623

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/511,518	Applicant(s) BEISEL, GUNTHER	
	Examiner Michael C. Henry	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/15/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-11 are pending in application

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has been placed in the application file and the information referred to therein has been considered as to the merits.

This application is a 371 of PCT/EP03/03910, filed 04/15/2003.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "is administered" in line 3. However, there is insufficient antecedent basis for this limitation in the claim. More specifically, there is no previous reference in the claim (or in claim 1 on which claim 7 depends) to the phrase "is administered."

Claims 8-11 provide for "the use of an agent " but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process

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applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8-11 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (GB 1302275).

In claim 1, applicant claims an “Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt. Young et al. disclose applicant’s agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum

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alginate) (see page 1, col. 1, lines 11-22 and claim 1). Young et al.'s agent is a reconstructed or simulated food product that comprises fruit pulp or puree encapsulated in a skin of aluminum alginate gel (see page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner gives little weight to the intended use of the agent since the claim is a composition or compound claim and the said intended use of the composition or compound does not add to the patentability of the composition or compound claimed. Furthermore, since Young et al.'s agent consist of the same gel of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Young et al.'s agent should inherently provide the same satiety or weight loss effect as applicant's agent. In addition, Young et al.'s disclose that their alginate gel can behave as a semipermeable (page 2, col. 1, lines 14-19). This implies that the alginate gel is porous. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Young et al. disclose applicant's agent, wherein the agent is present in compressed form (encapsulated form) (see page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner considers Young et al.'s encapsulated form of the said agent a compressed form, since said agent is shaped (compressed) into an encapsulated form. Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Young et al., since Young et al. agent contains aluminum alginate (see page 1, col. 1, lines 11-22 and claim 1). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Young et al., since Young et al. agent is present as aluminum alginate (see page 1, col. 1, lines 11-22 and claim 1). Claims 5 and 6 are drawn said agent according to claim 1, wherein the agent also contains active

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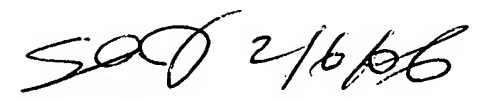
ingredients that include vitamins, trace elements, or medicinal compounds. Young et al. disclose applicant's agent, wherein the agent also contains incorporated aluminum or calcium ion (trace elements or active ingredients) (see page 1, col. 1, lines 11-22, and claims 1 and 6). Claim 7 is drawn to an agent according to claim 1, wherein the agent is administered in the form of tablets, capsules, coated tablets, granulates, or powders. Young et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 1, col. 1, lines 11-22, and claim 1).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8:30 am to 5:00 pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang, Ph.D can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

Michael C. Henry


Shaojia Anna Jiang, Ph.D.
Supervisory Patent Examiner
Art Unit 1623

February 2, 2006.